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MITIGATING THE SECURITY RISKS IN THE SOUTH CHINA SEA  
ISLAND DISPUTES

by

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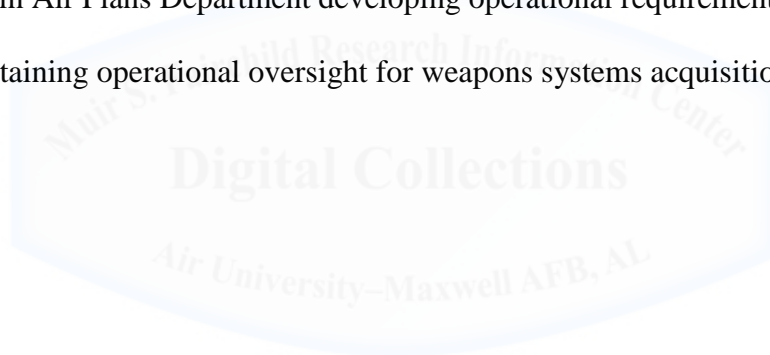
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## **Biography**

Colonel Peng Shin Sim is an officer from the Republic of Singapore Air Force (RSAF), currently assigned to the Air War College, Air University, Maxwell AFB. He graduated from Undergraduate Pilot Training in 1995 at Vance Air Force Base and has accumulated more than 2500 flying hours. His operational experience includes a tour as a fighter weapons instructor, an Officer Commanding (Assistant Director of Operations) tour in 425 FS / 56 FW, as well as a stint commanding a F-16 squadron in Singapore. He has also served as the Deputy Head of Air Operations HQ RSAF (Deputy A3 equivalent) responsible for Air Force level operations and training policies; as a branch head in J3 responsible for ops development and joint doctrines; and as a staff officer in Air Plans Department developing operational requirements for fighters and UAVs, and maintaining operational oversight for weapons systems acquisitions projects.



## **Abstract**

China, Taiwan and four Southeast Asian states have overlapping claims over a few groups of largely uninhabitable maritime features. In recent years, China has become more assertive in its claims over the disputed territories, raising concerns amongst the international community of the risks to stability and peace in the region. One of the most contentious issues is the extent and jurisdiction of China's claims. To date, China has not clarified its claim and instead adopts a policy of ambiguity. It uses diplomacy to stall negotiations, coercive pressure to prevent development of undersea resources, and employs civilian maritime agencies to enforce its control in the South China Sea. The Association of Southeast Nations (ASEAN) is disunited and has been largely ineffective in moving the dispute forward. However, China's assertiveness is a reflection of its lack of good policy options to protect its interests in the context of the US rebalance to the Asia Pacific. Its basic non-escalatory strategy of delay remains unchanged. With the physical occupation and control of maritime features backstopping China's claim strength, the situation is stable, albeit fragile. The key to mitigating the security risk in the region is thus to maintain this new equilibrium, discourage claimant states from taking unilateral and revisionist actions, and encourage the development of risk mitigating measures such as the Code of Conduct.

## **Introduction**

The territorial disputes in the South China Sea have become a real security concern for China, the United States and Southeast Asian countries. The disputes are centered on the sovereignty of several groups of largely inhospitable islands in the South China Sea. China, Taiwan, Vietnam, Philippines, Malaysia, and Brunei contest the sovereignty of these islands. In recent years, China has become increasingly assertive and aggressive in its claims over these islands, resulting in increased tensions in the region. The United States and regional states are concerned that these confrontations could pose a security risk to the region.

The extent of the security risk depends on the interplay between China's strategy and US policy for the South China Sea disputes. This paper will argue that the security situation in the South China Sea is fragile but stable and the use of force by any claimant to resolve the territorial disputes is unlikely. The United States has iterated its neutrality in the disputes but expects the claimant states to resolve the disputes in accordance with international law. China's strategy in the South China Sea is constrained by a lack of any real alternative policies. Thus, China consistently uses ambiguity to delay resolving the disputes while strengthening its position in the disputes. The key claimant states such as Vietnam and Philippines also face constraints in advancing their claims. The paper will also examine how and why the US rebalance to Asia has caused China adopt a change in tactics but continue its strategy of delay.

## **Background of the Island Disputes**

According to former Peoples Liberation Army Navy (PLAN) Commander Liu Hanqing, "whoever controls the Spratlys will reap huge economic and military benefits".<sup>1</sup> The South China Sea contains significant resources, both living and undersea. The US Energy Information Administration estimates that the South China Sea holds approximately 11 billion barrels of oil

and 190 trillion cubic feet of natural gas. Another key resource is the fishing stock in the region, which is reportedly one of the most bio-diverse in the world, and could make up as much as 10% of the world's fishing stocks. This fishing stock supports the livelihoods of fishermen throughout the region. More than half of the world's annual merchant tonnage passes through the Straits of Malacca and much of this passes through the South China Sea as well. In addition, approximately a third of the global crude oil and more than half of global gas shipping passes through the South China Sea.<sup>2</sup> For the United States, \$1.2 trillion in trade passes through the sea annually. For China, approximately 80% of its oil is imported through this sea. Japan and South Korea also depends on the sea for access to its energy requirements. The South China Sea disputes should be viewed from the context of its importance to not just the region but also to the global economy.

In maritime disputes, there are generally two distinct types of claims: first, states make maritime claims on territories such as islands, reefs, and shoals; second, states make a claim on maritime boundaries and zones such as territorial seas, contiguous zones and Exclusive Economic Zones (EEZ).<sup>3</sup> Under the United Nations Convention on the Law of the Sea (UNCLOS), signatory states agree to relinquish most of their historical claims to maritime zones.<sup>4</sup> Instead, UNCLOS provides for coastal states to proclaim maritime zones based on its territorial baselines and sovereignty of qualifying maritime features. In settling maritime disputes, the first priority is to delineate maritime territories<sup>5</sup>. Thus, the key to gaining the maritime zones lies in gaining sovereignty of the maritime territories.

The disputed maritime territories are located in four main island groups: the Paracels, Pratas, Spratlys, and the Macclesfield Bank. Six claimant states have overlapping claims of the maritime features in the South China Sea and occupy them to varying degrees: China claims all

of the disputed islands in the South China Sea, and occupies the Paracels and 6 features in the Spratlys; Taiwan's claims are essentially similar to those of China, and it occupies the Pratas Islands, and Itu Aba in the Spratlys; Vietnam claims all of the Paracels and Spratlys, and occupies 29 features in the Spratlys; The Philippines claims 60 features in the eastern portion of the Spratlys including the Kalayan Island Group (KIG) and Scarborough Shoal and occupies 9 features; Malaysia claims 12 and occupies 5 features in the Spratlys; Brunei claims the Loiusa reef but does not occupy any features.<sup>6</sup>

In adjudicating territorial disputes under international law, the international court “manifests a hierarchical preference for treaty law, *uti possidetis*<sup>7</sup>, and effective control, respectively”.<sup>8</sup> The claimant states, including China are aware of the preferences of the international court system. As remarked by Sun Shuxian, the Executive Deputy Commander of China's National Maritime Surveillance Fleet, “we have been arguing that these islands have been ours since antiquity; these words are hollow; what really counts is your actual control and effective management.”<sup>9</sup> Thus, the action of occupying the maritime features can be interpreted as each state's attempt to strengthen its claim of sovereignty on the basis of international law.

### **China's Policy of Ambiguity**

China bases its claims to the islands and other geographic features in the South China Sea on surveying expeditions, fishing activities, and naval patrols since at least the 15th century.<sup>10</sup> In 1947, the Kuomintang government published an official map depicting a cow's tongue or nine-dashed line laying claim to large portions of the South China Sea. Since then, China has included the nine-dashed line in all subsequent map publications and has consistently reiterated its “indisputable sovereignty over the islands in the South China Sea and the adjacent waters”.<sup>11</sup>

However, the purpose and meaning of the nine-dashed line is unclear and subject to interpretation.

One possible interpretation is that China claims sovereignty over the entire South China Sea. However, in doing so, China would contradict its own ratification of UNCLOS to relinquish historical claims to maritime zones.<sup>12</sup> Alternatively, scholars such as Gao and Jia argue that the nine-dashed line is “synonymous with a claim of sovereignty over the island groups that always belonged to China and with an additional Chinese claim of historical rights of fishing, navigation, and other marine activities (including the exploration and exploitation of resources, mineral or otherwise) on the islands and in the adjacent waters”.<sup>13</sup> Thus, Gao and Jia seem to view that China claims sovereignty over the South China Sea islands and associated EEZs around the main island features. While China would be consistent with UNCLOS in making such a claim, it would be inconsistent in its own argument that small and uninhabited islands such as the Japanese island of Okinotorishima should not be entitled to a continental shelf or EEZ.<sup>14</sup> Furthermore, UNCLOS require states with overlapping EEZs to resolve their disputes peacefully. The Southeast Asian states have asked China to clarify the scope and extent of its claim but China has consistently refused to do so for three possible reasons.

First, China may be unwilling to clarify its claim in order to maintain a maximalist position in any future negotiations to resolve competing claims.<sup>15</sup> Second, China’s claim has also reduced its own domestic political maneuvering space. As earlier discussed, China is unable to reconcile its claims with its own ratification of UNCLOS. Yet, to relinquish a claim of sovereignty could trigger a strong nationalist backlash.<sup>16</sup> Third, China also appears to be unwilling to strain relations with the Association of Southeast Asia Nations (ASEAN). While it has declared an Air Defense Identification Zone in the East China Sea, China has publicly



dismissed any rumors that it would do the same in the South China Sea.<sup>17</sup> In the same news release, China also emphasized its optimism over the regional situation and its relations with ASEAN. Thus, China's use ambiguity to avoid conflict with ASEAN, maintain the status quo and delay the settlement of the dispute.

### **Strategy of Delay**

In general, a state has three options in managing its claims on a given territory. First, a strategy of cooperation involves either compromising or giving up the claim in its entirety and renouncing the use of force. Second, a strategy of escalation involves "engaging in coercive diplomacy to achieve a favorable outcome at the negotiating table" or the use of force to seize the contested territory. Fravel argues that a state is more likely to pursue an escalation strategy and use force to reverse a decline in its bargaining power or claim position in the dispute. In other words, the state perceives the cost of inaction to be higher than the cost of using force to regain its position. Third, a strategy of delay maintains a state's claims to the contested territory, but neither compromises nor uses force to settle the dispute. Delay is the most common strategy in territory disputes for three reasons. First, a delaying strategy allows a militarily weaker state to buy time to strengthen its future position at the negotiating table or on the battlefield. Second, shelving the dispute for another day is seen as an effective strategy for managing intractable and difficult disputes. Third, delay allows a state to consolidate its claim and strengthen its control over disputed territory.<sup>18</sup> Since 1949, China's strategy in the South China Sea is characterized by a dominance of delay but punctuated by two incidents where force was used to reverse a position of declining claim strength.

The 1974 China-South Vietnam clash in the Crescent Group of the Paracels occurred despite China's pursuit of a delay strategy towards the South Vietnamese government.<sup>19</sup> In the

years before the clash, both South Vietnam and the Philippines prospected for oil in the disputed areas while seizing 11 additional disputed maritime features in the Spratlys over a three year period.<sup>20</sup> Since 1950, China held only Woody (Yongxin) island in the Amphitrite Group and did not occupy any features in the Crescent Group or in the Spratlys. Facing a declining claim position, China elected to strengthen its own position in the Amphitrite Group, conduct regular patrols in the Paracels, and continue building the limited capabilities of the PLAN's South Fleet. As China expanded its presence in the Amphitrite Group, South Vietnam dispatched forces to confront the Chinese forces. The subsequent violent clash appeared to have escalated from the confrontation of the Chinese and South Vietnamese forces.<sup>21</sup>

Prior to the 1988 clash between China and Vietnam on Johnson Reef, China again faced a situation of declining claim strength over the Spratlys. Vietnam and Philippines had seized additional reefs in the Spratlys while Malaysia declared a 200 nautical mile EEZ, claimed 12 features, and seized three.<sup>22</sup> At that time, China occupied none of the features in the Spratlys. In 1987-1988, China set out to establish a base and meteorological station on Fiery Cross and occupy a total of 9 reefs. The scramble to occupy vacant reefs in the vicinity of Fiery Cross led to the armed confrontation between PLA and RVN troops. In the subsequent escalation to a short but violent clash on Johnson Reef, the PLAN ships sank three Vietnamese vessels killing 74 sailors. China's strategy shifted back to delay after the Mischief Reef incident in 1994 in order to deal with the diplomatic fallout.<sup>23</sup> Since then, China has not seized any further features in the South China Sea and has not evicted any other claimants although it possessed the capability to do so. Instead, China focused on consolidating its claim position by exercising control over the disputed territories, isolating its adversaries, and delaying the settlement of the disputes.

Further evidence of China's delay strategy can be found in its employment of diplomacy over the South China Sea issue. Although China has maintained that it is open for negotiations over the South China Sea issue, it has consistently erected roadblocks to prevent any substantial progress in the resolution of the disputes. First, China insists that the South China Sea dispute can only be resolved through bilateral negotiations, despite the multilateral nature of the problem.<sup>24</sup> However, China has refused to discuss the issue of sovereignty in any bilateral talks and has instead focused on joint exploration and crisis management. Second, China rejects any bilateral negotiations that it is not involved in, as evidenced by its protest against the joint Vietnam-Malaysia submissions to UN Commission on the Limits of the Continental Shelf (CLCS) in May 2009. Third, before any bilateral negotiation, China insists on two conditions: its sovereignty over the South China Sea maritime features and that the claimants shelve their sovereignty claims and jointly develop resources with China.

In recent years, China has shifted to the use of civil maritime agencies to exercise its control over the disputed territories. Prior to July 2013, two key organizations had responsibilities for this activity. First, the South Sea Region Fisheries Administration Bureau (SSRFAB) was responsible for "the comprehensive management of the waters of the Spratly Islands" and "organizes and implements the garrisoning of the Spratly reefs, fisheries management, and aquaculture development". Second, the Marine Surveillance Force (MSF) under the State Oceanographic Administration (SOA) was to "safeguard maritime rights and interests" in addition to enforcing Chinese laws regarding maritime affairs."<sup>25</sup> In July 2013, China reorganized these two agencies and various civilian maritime agencies into the newly established China Coast Guard (CCG). The restructured CCG is expected to improve China's law enforcement capabilities in the South China Sea. China's investment in the CCG is

significant and is indicative of China's non-escalatory strategy as well as its intent to frame the South China Sea issue as an internal law enforcement issue.

### **Role of ASEAN**

Despite its insistence on bilateral resolution, China began to diplomatically engage ASEAN on the South China Sea issue in the late 1990s to reassure the Southeast Asian states of its intentions. However, ASEAN's role thus far in resolving the dispute has been limited. Its most significant achievement in the issue has been signing the Declaration on the Conduct of Parties (DoC) with China in 2002 as this was the first time that China has accepted a multilateral agreement over the issue.<sup>26</sup> In an attempt to reduce tensions after the 1994 Mischief Reef incident, ASEAN agreed to draw up a Code of Conduct (COC). However, disagreements between ASEAN and China made a legally binding COC unachievable.<sup>27</sup> The key disagreements were the geographic scope of the disputes, policies governing construction on the features, military activities in the surrounding waters, and authority to detain and arrest errant fishermen fishing in the disputed waters.<sup>28</sup> After two further years of negotiations, China and ASEAN signed the DoC in 2002, which was essentially a non-binding political statement.

From 2002 to 2011, little was achieved in implementing the DoC. In the negotiations to implement the DoC, China opposed including a clause stating that the ASEAN members would consult among themselves prior to meeting with China. Prohibiting the ASEAN states from consulting with each other was not consistent with the principles of the consensus-based ASEAN organization and resulted in a China-ASEAN impasse. In July 2011, ASEAN agreed to drop the statement that its members would consult before meeting with China.<sup>29</sup> Instead, the final version of stated that the parties intended to "promote dialogue and consultations." Nevertheless, according to one report, the summary record of the meeting between ASEAN and Chinese

officials indicates that ASEAN intends to continue such prior consultations.<sup>30</sup> Furthermore, the guidelines state that the DoC will be implemented in a “step-by-step” manner, that participation in cooperative projects will be voluntary and that Confidence Building Measures will be decided by consensus. In other words, little progress has been made from 2002 to 2011 and it suggests that China’s role in the DoC guideline talks was more of a spoiler, which would be consistent with China’s overall delay strategy.

### **A Divided ASEAN**

The South China Sea issue has also exposed deep divisions within ASEAN. First, the disputes in the South China Sea are not only between China and Southeast Asian states. Four of the ASEAN states (Vietnam, the Philippines, Malaysia and Brunei) had overlapping claims to the Spratlys. In March 1999, Malaysia’s seized Navigator Reef, straining relations with the Philippines. Vietnam, Brunei and China also criticized Malaysia.<sup>31</sup> In August 2002, Vietnamese troops based on one islet fired warning shots at Philippine military planes.<sup>32</sup> Second, as the disputes do not affect all of the ASEAN states, the consensus based ASEAN could be fragmented by individual state interests. In July 2012, China’s influence over Cambodia contributed to ASEAN’s inaction during the 2012 Scarborough Shoal standoff. As a result, for the first time since it was founded in 1967, the ASEAN states did not issue a joint communiqué.<sup>33</sup> The divisions within ASEAN limited the ability of the organization in addressing the disputes.

China’s influence on the Vietnamese economy is immense. Currently, China is Vietnam’s largest trading partner and main export destination. By using preferential loans and trade deals to boost Vietnam’s industrial and agricultural sectors, China has enormous leverage over Vietnam. Beijing has also warned foreign oil companies against joint development projects

in disputed waters.<sup>34</sup> Compared to the rest of the claimant states, Vietnam has also lost the most territories to China. Yet, Vietnam has managed to balance its economic interests with its territorial claims. However, its actions are likely to continue to be guided by the economic ties and geographical proximity of China.

In contrast, the Philippine approach towards the disputes is more unilateral, aggressive, and provocative. The Aquino government has also shown that it is unwilling to compromise on its territorial disputes for its economic relationship with China and continues to challenge China at sea and legally.<sup>35</sup> In 1999, the Philippines intentionally beached a former US Landing Ship Tank, the BRP Sierra Madre, on the Second Thomas Shoal (Ayugin Shoal) and maintains a small detachment of marines onboard the ship to guard its claim. The shoal lies within the Philippines' EEZ and serves as a "strategic gateway" to Reed Bank.<sup>36</sup> Presently, China prevents any attempt to repair the badly corroding ship and exerts continuous pressure on the Philippines to give up the shoal. Bilateral relations also became strained in 2012 due to a standoff over the Scarborough Shoal, north of the Spratlys. The Philippines had dispatched its largest warship to investigate sightings of Chinese fishing boats at the Scarborough Shoal. In response, China deployed unarmed civilian maritime vessels to prevent the arrest of its fishermen. A two-month stand off at the shoal ensued and repeated diplomatic efforts failed to defuse the situation. China imposed strict regulations that essentially restricted imported fruits from the Philippines and issued a travel advisory for discouraging Chinese tourists from visiting Philippines. Both actions damaged Philippine economic interests.<sup>37</sup> Sending a warship to enforce fishery laws was also a tactical error that undermined the credibility of the Philippine government.<sup>38</sup> In January 2013, the Philippines formally lodged a legal Notification and Statement of Claim to the United Nations to establish an Arbitral Tribunal under UNCLOS. The aim of the Philippines was to

invalidate the nine-dashed line claim by China. China has angrily rejected this claim and refused to participate in the proceedings. China-Philippine relations nose-dived even as the Tribunal deliberates its own authority and jurisdiction over the case.<sup>39,40</sup>

### **Change in Tactics, Continuity in Strategy**

Regional developments since 2006 has eroded China's position and contributed to a sense of insecurity. To compensate for declining production levels at the three oil fields, PetroVietnam engaged foreign energy companies since 2006 to jointly explore and develop new oil fields in the South China Sea.<sup>41</sup> In contrast, China National Offshore Oil Corporation (CNOOC) which is China's only company that possess deep sea drilling capabilities have only drilled wells in the non-disputed areas immediately south of the country's coastline.<sup>42</sup> In response, China issued diplomatic protests to foreign oil companies that were involved with Vietnam in oil development and production projects. In 2006 alone, 18 diplomatic protests were lodged.<sup>43</sup> In May 2009, Vietnam and Malaysia's joint submission to the UN CLCS marks a rare joint agreement between two claimant states in the dispute that weakened China's bargaining position. However, the most important development was in 2010 when the United States officially announced its "pivot" to Asia. This was followed by the U.S. Secretary of State, Hillary Clinton's speech at the July 2010 ASEAN Regional Forum in Hanoi where three key points were made.

First, Clinton stated the United State's national interest in the freedom of navigation, open access to the maritime commons, and respect for international law in the South China Sea. Second, the United States supported collaborative diplomatic processes to resolve the disputes, and rejects and use or threat of use of force. Third, the United States maintains neutrality in the territorial disputes but expects the claimants to resolve the disputes in accordance with international law.<sup>44</sup> After Clinton's speech, most of the ASEAN member states raised the South

China Sea as an issue of concern. According to Lai, all three points were direct attacks on China's policy. The first anchored the United States as a stakeholder in the South China Sea; the second point criticized China's insistence on bilateral negotiations; and the last point rejects China's historical claims based on the nine-dashed lines.<sup>45</sup> China interpreted the speech as an attack on Chinese policy and interference in what it considered an internal matter. China was also furious that Clinton had ignored its request not to raise the issue at the ARF. China responded with a rebuttal as well as a large-scale live fire military exercise in the South China Sea that reportedly involved all of China's naval fleets.<sup>46</sup> However, it does appear that US actions had a positive effect on stabilizing the disputes. Despite increased U.S. pressure, China appears to continue its policy with three priorities: first, deepening the claimant countries' economic dependence on China; preventing the development of the disputed areas; and avoiding a direct confrontation with the United States.<sup>47</sup> Wu Dawei, the Deputy Minister of Foreign Affairs, also noted in March 2012 that this was "the first time that Beijing put relations with neighbors as one of its top foreign policy priorities".<sup>48</sup>

Moreover, any shift in China's policy is constrained by three "cannots": it cannot negotiate an agreement with the other claimants; it cannot resort to force, and it cannot allow the current situation to last indefinitely (*Tan bu long, Da bu de, Tuo bu qi*).<sup>49</sup> China has come to the realization that it is not to its interest to use force to resolve the territorial disputes. First, it would provide Washington the justification to further strengthen the American presence in the region. Second, the use of force could derail the regional peace and stability that China also desires so that it can focus on economic development.<sup>50</sup> Given these constraints, China's only viable long-term strategy for securing sovereignty of the islands will continue to be premised on the principles of permanent occupation and effective control. In this context, Chinese



maritime expert Qu Bo argues that China should adopt a “zero tolerance” approach to the presence of other foreigners in the South China Sea, and increase efforts to strengthen its claims by focusing on more effective control, enforcement of maritime laws and regulations, greater use of jurisdictional measures, and increasing military presence.<sup>51</sup>

China’s actions from 2009 indicate that it has adopted the basic principles of Qu Bo’s approach. In 2009, China claimed for the first time that it has established regular patrols over the entire claimed area in the South China Sea. In March 2009, Chinese vessels harassed the US hydrographic survey vessel, the *USNS Impeccable*, triggering the United States to send a destroyer escort.<sup>52</sup> Speculation also arose in 2010 that China had redefined the South China Sea disputes as one of its “core interests”. In the first half of 2011, MSF ships were involved in two separate incidents in which they challenged and disrupted survey activities by Vietnam and the Philippines. Vietnamese officials described these incidents as “hostile”, “aggressive” and the “most serious incident” between China and Vietnam since 1998. However, these were more likely specific warnings to Vietnam.<sup>53,54</sup> In April 2010, the PLAN demonstrated its power projection capabilities in a large-scale exercise involving the South, East and North Sea Fleets. In 2012, China established Sansha city on Woody (Yongxin) island to administer all its South China Sea territories<sup>55</sup>. These actions were meant to demonstrate China’s effective control and strengthen its claims over the disputed areas.

If China had opted for a strategy of escalation, the evidence is on the contrary. In the 2012 Scarborough Shoal incident, Philippines had escalated the incident by sending a naval vessel, the BRP *Gregorio del Pilar*, to board and inspect Chinese fishing vessels. Instead of responding with PLAN vessels, China responded with civilian maritime vessels from the MSF and did not employ force in the standoff. This indicates that China preferred not to escalate

militarily even though it could have justified doing so. Another indication of a delaying strategy was the way China moderated its approach towards the detention of Vietnamese fishermen in the South China Sea. In 2009, there were 33 detentions, and in 2010, the number reduced to 7. The SSFRAB however continued to confiscate equipment and catches.<sup>56</sup> Thus, China's actions should be viewed as a change in tactics rather than a change in strategy.

### **Security Risks and Policy Implications**

The most serious threat to the fragile state of balance in the South China Sea is a significant decline in China's claim strength over the disputed islands. At least three scenarios could result in the serious weakening of China's claim. First, the Philippines succeed in unilaterally invalidating China's nine-dashed line claim at the international tribunal. While China could ignore or dismiss such a ruling, its current strategy of delay will no longer improve its legal position. The only viable alternative to improve its position would be to adopt a strategy of escalation. Therefore, the United States should strongly discourage any claimant states from taking this approach unilaterally. Second, if the United States were to take a side in the dispute or significantly arm the Philippines or Vietnam, China could perceive such a move as a departure from historical norms and a revisionist attempt to change the status quo. The United States should continue to maintain its neutrality as it does not have a direct national interest in the island disputes, and consider the potentially destabilizing effects of arms sales. Third, local skirmishes or confrontations between armed forces risk escalating into a larger and wider conflict. A binding COC aimed at reducing tensions and risks of violent confrontation remains a useful tool. The United States should encourage ASEAN and China to work towards such a COC.

## **Conclusion**

The South China Sea island disputes are complex and intractable because of the stakes and number of claimants involved. China's previous use of force in the South China Sea was aimed at reversing a decline in its claim strength to disputed territories coupled with an increasing importance of the disputed territories. However, China's current occupation and control of territories in the South China Sea backstops any decline in its claim position. In the long term, China also perceives that there is a need to strengthen its claims based on international law. Any deliberate use of force today will thus be counter to its preferred strategy of delay. China's increased assertiveness and aggressiveness in the South China Sea in recent years was a response to the US rebalance to the Asia Pacific and declining claim strength. However, the evidence indicates that China continues to pursue a strategy of delay as it lacks any real policy alternatives. Thus, the situation has arrived at a stable but fragile balance. The key to mitigating the security risks is to maintain this balance where the United States continues to underwrite the security of the region while proactively discouraging claimant states from making potentially destabilizing steps to delegitimize China's claims.

## Notes

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<sup>5</sup> Rothwell, Donald R., The 1982 UN Convention on the Law of the Sea and its relevance to maritime disputes in the South China Sea, The South China Sea and Australia's Regional Security Environment, National Security College Occasional Paper, No. 5 September 2013, 14-16

<sup>6</sup> Lai, David, *Asia Pacific, A Strategic Assessment*, Army War College, Carlisle, 62

<sup>7</sup> "Uti possidetis" is the doctrine under which "old administrative boundaries will become international boundaries when a political subdivision achieves independence." Black's Law Dictionary 1544 (7th ed. 1999)

<sup>8</sup> Sumner, Brian Taylor, *Territorial Disputes at the International Court of Justice*, Duke Law Journal [Vol. 53:1779], 1780-1781

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- <sup>19</sup> Fravel, M. Taylor. 2008. *Strong borders, secure nation: cooperation and conflict in China's territorial disputes*. Princeton: Princeton University Press., 281-282
- <sup>20</sup> Ibid, 279
- <sup>21</sup> Ibid, 281-282
- <sup>22</sup> Fravel, M. Taylor, *China's Strategy in the South China Sea*, Contemporary Southeast Asia Vol. 33. No. 3 (2011), 290
- <sup>23</sup> Ibid, 299
- <sup>24</sup> Ibid, 300
- <sup>25</sup> Ibid., 304-305
- <sup>26</sup> Buszynski, Leszek, *ASEAN, The Code of Conduct, and the South China Sea*, Contemporary Southeast Asia 25, No.3, 2003, 343
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